

1 IN THE UNITED STATES DISTRICT COURT

2 DISTRICT OF ARIZONA

3 UNITED STATES OF AMERICA

4 vs.

CR-11-1013-TUC-RCC

5 GHERMON LATEKE TUCKER, et al.,

6 Defendants.
7 _____

8 July 23, 2012
9 Tucson, Arizona

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14 MOTION HEARING

15 BEFORE THE HONORABLE RANER C. COLLINS
16 UNITED STATES DISTRICT JUDGE
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22 Court Reporter: Erica R. Grund, RDR, CRR
23 Official Court Reporter
24 405 W. Congress Street
Tucson, Arizona 85701

25 Proceedings prepared by computerized realtime
translation

A P P E A R A N C E S

For the Government: James T. Lacey
Kimberly E. Hopkins
Assistant U.S. Attorneys

For Ghermon Tucker: Dan Cooper
Cooper & Udall PC

For Jerome Ranger: Stephen Jonathan Young
Williamson & Young

For Ja'Cory Ranger: Bradley James Armstrong
Armstrong Law Office

1 P R O C E E D I N G S

2 THE CLERK: CR-11-1013, United States of
3 America vs. Ghermon Lateke Tucker, Ja'Cory Dante
4 Ranger, and Jerome Noel Ranger, on for pending
5 motions.

6 Counsel, please state your appearance.

7 MR. LACEY: Good afternoon, Your Honor.
8 James Lacey and Kim Hopkins for the United States.

9 THE COURT: Good afternoon.

10 MR. COOPER: Good afternoon. Dan Cooper
11 on behalf of Ghermon Tucker. He's present, Your
12 Honor.

13 THE COURT: Good afternoon.

14 MR. ARMSTRONG: And Brad Armstrong for
15 Ja'Cory Ranger. He's also present.

16 THE COURT: Good afternoon.

17 MR. ARMSTRONG: Good afternoon.

18 MR. YOUNG: And good afternoon, Your
19 Honor. Jon Young for Jerome Ranger, who is out of
20 custody but not yet present in court. I talked to
21 him 14 minutes ago. He said he was 10 minutes
22 away, so I imagine he's getting close.

23 THE COURT: Good afternoon. Do you want
24 to wait for his presence?

25 MR. YOUNG: If the Court's willing, I'm

1 willing to waive it, Your Honor. I'll waive.

2 THE COURT: Let's wait.

3 MR. YOUNG: Okay.

4 THE COURT: If he's just a few moments
5 away, let's wait. When you said 14 minutes ago, he
6 was 10 minutes away. I'm not that good at math,
7 but that means he should be close.

8 MR. YOUNG: He's probably putting his
9 shoes back on, Your Honor.

10 MR. ARMSTRONG: Your Honor, I just
11 received a text from Mrs. Ranger. She says they're
12 just a few minutes out.

13 THE COURT: Okay.

14 (Off the record.)

15 THE COURT: Show that Mr. Jerome Ranger is
16 now present.

17 DEFENDANT JEROME RANGER: Yes, sir.

18 THE COURT: Which motion do you want to
19 deal with first?

20 MR. COOPER: May I approach the podium?

21 THE COURT: You may.

22 MR. COOPER: Your Honor, the issue that
23 I'd request that we do first would be our motion
24 regarding the suggestiveness of the initial
25 identification, and in our joint motions in limine,

1 I believe it would be three.

2 I think there are numerous motions the
3 Government believes are going to be uncontested
4 today. This is one of the contested motions.

5 THE COURT: Okay.

6 MR. COOPER: The Government's response to
7 the motion -- and we have to go back in time to the
8 motions hearing, or the hearing I guess a couple
9 weeks ago in which the Government indicated it was
10 not going to use the suggestive identification
11 procedure by the FBI with the informant. That was
12 the procedure we had objected to in which
13 Mr. Tucker had then, at the change of plea, been
14 asked about whether he was present at the February
15 4th.

16 I indicated that I thought that now that
17 he was being -- that his plea was being, by the
18 Government, requested to be thrown out, that he was
19 at a great disadvantage because he had basically
20 admitted to being at that February 4th meeting.

21 The Government then indicated quite
22 magnanimously that it would not use that
23 identification procedure, and the Court I remember
24 indicated -- because I had then said at that time,
25 that puts me in somewhat of a bind as to what I'm

1 going to be saying about the identification.

2 We now know what the Government had in
3 mind, because in their response, they say, we're
4 not going to worry about the procedure on February
5 14th in which Agent Edwards showed a one-person
6 photographic show-up to the informant and said,
7 basically, is this the person, and Mr. Tucker was
8 identified.

9 We're absolutely not going to go there;
10 however, what we are going to do is we're going to
11 ask the informant at trial to make an in-court
12 identification of Mr. Tucker as being present at
13 the February 4th meeting. And the problem with
14 that is, you know, the Government's magnanimity is
15 not quite so much.

16 The real issue, Your Honor, is the
17 suggestiveness of the initial identification, which
18 was on February 14th and which was the subject of
19 the motion to suppress. And then the Government,
20 when we -- when I said, you know, how can you now
21 pull Mr. Tucker's plea when he admitted that, when,
22 he didn't really need to during the colloquy for
23 the change of plea and the Government said, don't
24 worry, we're not going to use it, the whole issue
25 is suggestiveness and whether or not the

1 suggestiveness of the initial identification then
2 taints any subsequent procedures.

3 So what the Government is doing is having
4 it all its own way. It's saying, we're not going
5 to go into the procedure by which the informant
6 identified Mr. Tucker. Well, that's great, because
7 our claim is that it was a fully suggestive
8 identification.

9 So the Government says, we're just going
10 to skip that, and Tucker and his attorney are not
11 going to be able to challenge that. We're not
12 going to go into it. All we'll do is we'll jump
13 ahead to the in-court identification which, Your
14 Honor, under all the case law, under the Arizona
15 case law, under the case -- under federal case law,
16 the issue is the suggestiveness of the initial
17 identification.

18 And we believe we've made a prima facie
19 case that this identification, this photo
20 identification procedure, absolutely was suggestive
21 and could not help but have tainted any subsequent
22 identification, particularly an in-court
23 identification.

24 So the Government simply can't say, we're
25 just going to ignore the February 14th absolutely

1 suggestive procedure, and we'll give Cooper that.
2 Instead we'll just jump ahead to the trial and have
3 the informant identify him at trial.

4 They're intertwined. They're totally
5 related. You can't say, well, we won't deal with
6 the February 14th procedure. We'll just jump ahead
7 to the in-court identification, which has now been
8 tainted by the February 14th procedure.

9 And we believe that the Government, the
10 Government's offer not to use the February 14th
11 identification amounts to absolutely nothing if
12 they're now going to use the subsequent tainted
13 in-court identification.

14 THE COURT: Mr. Lacey?

15 MR. LACEY: Yes, Your Honor. Good
16 afternoon, Your Honor.

17 THE COURT: Good afternoon.

18 MR. LACEY: Your Honor as far as the
19 February 14th showing of photographs to the
20 informant back on that date, there were a total of
21 18 photographs shown. There were two black males
22 that were in that spread, and the rest were
23 non-black, if you will.

24 The way the two black males were selected
25 was by license plates that were identified outside

1 of the meeting on 2/4 or thereafter when they did
2 some follow-up surveillance, and it comes back to
3 Michael Austin and Mr. Tucker as the two males that
4 were identified through license plate tags.

5 THE COURT: The two photographs were of
6 Michael Austin and Mr. --

7 MR. LACEY: Mr. Tucker, yes, Your Honor.

8 THE COURT: -- Tucker?

9 MR. LACEY: That's correct.

10 And as far as it being unduly suggestive,
11 would it have been better to have a six-pack or an
12 eight-pack, you know, if it was a bank robbery or
13 on the scene of things, but as we've heard
14 testimony from the agent, this was a developing
15 investigation, trying to see where the tentacles
16 led them.

17 It was not an issue of, was this a split-
18 second meeting. If we need to have a hearing
19 regarding that particular spread of photographs
20 that were shown to the informant, so be it.

21 THE COURT: We've already had testimony
22 about that issue already.

23 MR. LACEY: We have, so I just don't see
24 the point, but I suggest to the Court that it was
25 not unduly suggestive. It was just, do you see

1 anyone here that was at that meeting back on 2/4?
2 He picked out Mr. Tucker, and he picked out -- I
3 believe there were three or four of the Mexican
4 defendants that were similarly at that meeting that
5 were in that package of 16 photographs.

6 One kind of corroborates the other, and we
7 now know from the Mexican defendants who have pled
8 guilty in the investigation that the informant, the
9 cooperator, was right on as far as all the people
10 that he identified back on 2/14 that had been at
11 the meeting on 2/4.

12 And I don't -- I submit to the Court it
13 wasn't unduly suggestive, and any in-court
14 identification which has already been made on two
15 different occasions, as I recall, by the
16 cooperator, should happen in front of the jury as
17 well, that he should be permitted, if he can, to
18 pick out Mr. Tucker as being present at the 2/4
19 meeting.

20 THE COURT: So your argument is that it
21 wasn't unduly suggestive --

22 MR. LACEY: That's correct.

23 THE COURT: -- number one and, therefore,
24 any in-court identification shouldn't be tainted?

25 MR. LACEY: Exactly.

1 THE COURT: Okay. Mr. Cooper, anything
2 further?

3 MR. COOPER: No, Your Honor.

4 THE COURT: Thank you. I'll take it under
5 advisement.

6 Next motion. Was that motion -- which
7 motion was that, No. 1?

8 MR. COOPER: Number 3, Your Honor.

9 THE COURT: Well, your No. 3 is --

10 MR. COOPER: It's our -- on the joint
11 motions in limine that was filed --

12 THE COURT: It's Motion 702 then. That's
13 what I need, the docket number.

14 MS. HOPKINS: I think it's 767.

15 THE COURT: 767? Okay. That's the one I
16 need. That's the number I need. Okay.

17 MR. COOPER: I've got CR-702. Document
18 767 is the Government's response.

19 THE COURT: Okay. 702. Next motion.

20 MR. COOPER: Your Honor, I believe the
21 other one that I -- and I think Mr. Young and
22 Mr. Armstrong would like to address this as well,
23 which would be No. 1, which would be our Crawford
24 motion, essentially, and it's CR-585. Under the
25 joint motions in limine, it would be No. 1. The

1 Government's response is Document 585.

2 THE COURT: Okay.

3 MR. COOPER: What I would point to, Your
4 Honor -- and this is our motion regarding the
5 conversations essentially taking place between the
6 informant and various Mexican defendants.

7 Really the Government can't point to
8 hardly any conversations between the black
9 defendants, if any. These are all the tape
10 recorded conversations that the informant had with
11 all of the defendants who already pled and will not
12 be involved in this case.

13 I'd point you to the last sentence of the
14 Government's response, which essentially
15 demonstrates that the Government has totally missed
16 the point. That sentence says, "Defendants who are
17 suspected of ongoing criminal activity have no
18 protection from their own misplaced confidence in
19 an undercover Government informant."

20 Well, that does nothing for Crawford, Your
21 Honor, because frankly, this language, the
22 misplaced confidence in the undercover Government
23 informant was from the Mexicans. That's where the
24 Crawford issue is. The black guys didn't have any
25 confidence in this informant. They didn't have any

1 dealings with him.

2 So the Government can't now come in and
3 argue, citing a 1966 case, Hoffa v. United States,
4 that it's these defendants' fault that they had
5 confidence in Tony. They had nothing to do with
6 Tony. All these conversations were with the
7 defendants who are no longer in this case, and we
8 won't have the opportunity to cross-examine them.

9 THE COURT: And you're saying these are
10 conversations that occurred prior to the arrest?

11 MR. COOPER: That's correct.

12 THE COURT: These are conversations that
13 were in the quote/unquote planning stage of the --

14 MR. COOPER: Yes.

15 THE COURT: -- supposed rip?

16 MR. COOPER: That's right.

17 THE COURT: And they were all held with
18 the Mexican codefendants.

19 MR. COOPER: That's right.

20 THE COURT: The Government's claiming that
21 those are statements made by co-conspirators, and
22 they should come in for that reason.

23 MR. COOPER: Right. And they cite the
24 fact that Crawford doesn't apply because of the
25 misplaced confidence the person involved in

1 criminal activity has in the Government's
2 informant. They had no misplaced confidence in the
3 Government informant because they hadn't met him.

4 MR. LACEY: As the Court I suspect is
5 seeing with the argument being made by counsel,
6 here we have statements made during and in
7 furtherance of the conspiracy, albeit mostly by the
8 Mexican defendants, although you recall on 2/4
9 there were also statements in English between a
10 black male who was present at this meeting and
11 Mayco and the informant.

12 Where someone joins in the existing
13 conspiracy, the law has been here for just about
14 forever, one who joins in an existing conspiracy is
15 accountable for all that took place during -- prior
16 to them joining the conspiracy.

17 So first we have the blacks that joined
18 afterwards. We submit that, first off, Tucker was
19 part of that. But second, anyone that came in
20 later is accountable for what the codefendants or
21 co-conspirators said early on. Whether they were
22 there or not, whether they were even part of the
23 conspiracy at that point in time, they adopted
24 anything that took place during the planning stages
25 of this particular rip that was going to be done

1 here in Tucson.

2 THE COURT: Mr. Young, did you want to say
3 something additional about this?

4 MR. YOUNG: Yes, Your Honor.

5 The motion -- this motion started at
6 CR-277, I filed a supplement to it at 585. The
7 supplement addressed only the confrontation portion
8 at 585. There is the Government's response at
9 606. It's No. 1 in the joint motions in limine.
10 It's 767. And it's No. 1 in the Government's
11 response to the motions in limine at 790.

12 What I'm raising, the portion of what I'm
13 raising, Saji Vettiyl originally raised this as a
14 hearsay and confrontation motion at 277, but since
15 then, I've analyzed it as a confrontation motion.

16 So what I'm -- what I'm advancing is not a
17 hearsay objection at all. It's a confrontation
18 objection.

19 THE COURT: Under Crawford.

20 MR. YOUNG: Under Crawford, right. So the
21 hearsay objection, the co-conspirator statement is
22 really not relevant to what I want to talk about,
23 which is Crawford.

24 Crawford requires confrontation of
25 testimonial evidence, and it offers up a definition

1 of testimonial evidence, because that's not a term
2 that we've really been using up until now. It
3 defines testimonial evidence to include, at a
4 minimum, police interrogation, at a minimum, police
5 interrogation. So I know it includes that much.

6 Then the question is, is this police
7 interrogation, everything this informant has gone
8 out and inquired of everyone in the course of his
9 investigation?

10 The police hired this confidential
11 informant many years ago. They paid him many
12 thousands of dollars, over \$100,000 in this case,
13 plus much more money in many other cases. He's
14 clearly working for the police. He's a paid
15 informant.

16 Paid informants have done police
17 interrogation for many years, and I'll throw out a
18 couple cases there. Henry and I think the Messiah
19 case, the jailhouse informant cases. Paid
20 informants working for the police, if they're
21 working for the police before they start looking,
22 are police interrogation.

23 And as far as what's interrogation and
24 what's not interrogation, the CI in this case
25 clearly -- and he admitted on the stand. He stated

1 that he did deliberately elicit responses, which is
2 the test for interrogation. You can use a
3 functional equivalent test too, but they both come
4 down to the same thing, deliberately eliciting
5 responses.

6 He was working for the police, and he
7 deliberately elicited responses, so everything that
8 he got back is police interrogation, and it needs
9 to be confronted.

10 The Government's response starts out by
11 citing a case here, United States vs. Larson, at
12 460 F.3d 1200. I took a look at the Larson case
13 over the weekend and frankly lost interest in it
14 when I realized that it was vacated later the same
15 year. The subsequent -- it was vacated at 471 F.3d
16 1359.

17 The subsequent case in Larson at 495 F.3d
18 1094 does not address out-of-court statements at
19 all. It finds error in precluding cross-
20 examination on a CI's mandatory minimum. The CI
21 was facing life in that case, and the Court
22 precluded that. Clearly that's something that the
23 defense would have liked the jury to know about in
24 that case. So that's where the Larson case went.

25 The Government's thought here is

1 interesting to me because their thought is that the
2 declarants, mostly Chivo and Gollo in this case,
3 they did most of the talking, their thought is that
4 the declarants had no expectation, that's what they
5 say, because the declarants had no expectation that
6 the statement might be used at trial.

7 Somehow because Chivo and Gollo had no
8 expectation that this would be used in court,
9 therefore I don't need to cross-examine their made-
10 up statements, that just on the face of it is not
11 making any sense to me, particularly in light of
12 some of the other stuff I'm seeing, the unreliable
13 nature of everything that Gollo and Chivo had to
14 say.

15 Chivo starts out this case by having
16 claimed -- and this is what I understand to be a
17 false claim, but he claimed to have cut some guy's
18 head off for \$5,000. He claimed that Chilango
19 drove him to this murder where he cut somebody's
20 head off as part of a contract killing.

21 Gollo and Chivo both repeatedly claimed to
22 have kidnapped and thrown away three workers for
23 Macho Prieto, thrown away, slang for having
24 killed --

25 THE COURT: Stop for a second. Do you

1 intend to go into those conversations that he just
2 talked about at all?

3 MR. LACEY: No.

4 MR. YOUNG: The point being --

5 THE COURT: Those two conversations --
6 Okay.

7 MR. YOUNG: There is a whole lot of other
8 conversations that are also unreliable because
9 these two guys are unreliable. They are puffing
10 their ability. They are talking about blacks.
11 They claimed one, two, or four blacks, but they
12 never claim anywhere near nine blacks.

13 And in fact, Gollo, Gollito, and Chivo
14 also said on March the 2nd that they didn't bring
15 any blacks. That they did not bring the blacks.

16 The kidnapping, they claimed yet another
17 kidnapping, a son of a Macho Prieto worker, for
18 which they got \$300,000. And I imagine -- I don't
19 know if the Government wants to go into that or
20 not. It doesn't really matter.

21 THE COURT: Are you going into that one?

22 MR. LACEY: No.

23 MR. YOUNG: It's further indicia of the
24 unreliability of these two guys and why we really
25 need to cross-examine these two guys rather than

1 just let everything that they said about blacks
2 generally roll into the case.

3 Now, when they're talking about blacks,
4 they never once name or identify anybody, certainly
5 not these three defendants, and they don't name or
6 identify any of the other defendants. Nobody gets
7 named. They're just talking about blacks that they
8 have working for them, that they have doing other
9 jobs, that they have doing things for them, that
10 they're tough, that they're dangerous.

11 You've seen my list of other home
12 invasions. It's No. 6, and we'll get to that down
13 the line. There's a long line of made-up stuff
14 about blacks, or it's about some other blacks. I
15 don't know which, but it's not about these blacks.
16 It's something that needs to be -- needs to be
17 addressed. It's unreliable.

18 And also I'm noticing, as I look back at
19 the docket this past week, I'm realizing that Chivo
20 and Gollo have both been sentenced, so it's looking
21 to me like they're not going to be testifying as
22 part of this case, and I'll extrapolate just a
23 little bit from my knowledge of having tried cases
24 here before, my guess is that they have probably
25 been debriefed by the Government and were unable to

1 identify any of these three people or probably any
2 of the nine blacks that were involved in the case.

3 I'm thinking that there is probably some
4 exculpatory evidence that Gollo and Chivo could
5 bring to the case that these are the wrong people
6 or that these guys were not hired by Gollo and
7 Chivo and that they have never been hired by Gollo
8 and Chivo, and that's why Gollo and Chivo are
9 sentenced and they're not testifying in this case.

10 So for many reasons their statements about
11 blacks should not be used in this case.
12 Unreliability, the fact that they are clearly not
13 talking about these blacks, and the fact that we
14 have a right to confront testimonial evidence in
15 this case.

16 And I think just simply the definition of
17 "testimonial evidence" gets us where we need to be,
18 but I really can't talk about that without talking
19 about the unreliability of everything that those
20 two had to say, and also the possible exculpatory
21 nature of what came out in their debriefings.

22 I haven't gotten it yet. I don't know
23 what it is, but if they did say that these are not
24 the blacks and we didn't hire the blacks and we've
25 never worked with these three guys before, I assume

1 I would have that in my hand by now.

2 And that's all I have, Your Honor.

3 THE COURT: Mr. Armstrong?

4 MR. ARMSTRONG: Your Honor, very briefly.

5 I'm probably not adding much to anything
6 Mr. Cooper and Mr. Young have brought up, but I do
7 think that we need to go beyond whether this is
8 merely testimonial or nontestimonial for the
9 Crawford analysis.

10 I wholeheartedly agree with Mr. Young that
11 the reliability aspect of this needs to be
12 considered, and I'm asking the Court to consider
13 that, given what Chivo and Gollo, the statements
14 they may have made, even if the Government isn't
15 going to bring in some of the more salacious
16 comments, I think these are people that the jury
17 would -- I feel I would need to be able to cross-
18 examine what it is they're saying, the various
19 claims that they may be making about, you know,
20 what was going to happen here, the planning stage,
21 things such as that.

22 So, Judge I would ask the Court to also
23 consider the reliability factor that was -- I guess
24 that was the state of the law before 2004
25 Crawford. That was one of the prongs that the

1 Court would have to look at.

2 But in this case in particular, given that
3 there is a confidential informant, you've got
4 folks -- he's recorded, and they're saying all
5 sorts of wild things, and even when we get rid of
6 the wild things, we're still going into things that
7 the jury is going to hear about my client that I'm
8 going to be completely unable to cross-examine.

9 And so for that reason I'd ask that the
10 Court find that these are testimonial and exclude
11 them.

12 THE COURT: Thanks.

13 MR. LACEY: Just one thing. The only
14 thing I would point out to the Court is Messiah
15 deals with people that have been indicted. We're
16 not there.

17 And I've already addressed the other
18 issues, unless Court has anything further.

19 THE COURT: All right. Thanks. Next
20 motion.

21 MR. COOPER: Your Honor, I know that we're
22 jumping around a little bit, and I don't have the
23 number, but I filed a couple of Brady motions last
24 week, and I'd like to address the issues in them,
25 if I could.

1 THE COURT: Okay.

2 MR. COOPER: The informant in this case
3 will play a central role as to what happens.

4 THE COURT: You filed them on the 19th,
5 motion 787 and 786.

6 MR. COOPER: Thank you.

7 I believe that there is a considerable
8 amount of Brady material with respect to him that
9 we haven't received. In particular, Your Honor, he
10 testified at the suppression hearing that he had
11 been stopped in New Mexico and arrested with
12 multiple pounds of marijuana and that he had been
13 released.

14 I believe that that happened because he
15 was working for the Government, and I believe that
16 that is Brady material, and it's a benefit to him,
17 and I'd like to see all of the information with
18 respect to that arrest, why he was not charged, and
19 how this, as he put it, mistake, wound up not
20 costing him anything.

21 I'd like to know who, in fact, authorized
22 there being no charges. We've seen no
23 documentation whatsoever from this incident. Even
24 if he at the time was not working on this case, he
25 was working as an informant for the Government at

1 the time, and prior to -- I believe prior to
2 getting involved in this case.

3 But I think it's relevant as to the kinds
4 of benefits he receives as an informant, and it's
5 also highly material as to how he is treated as an
6 informant.

7 And the second main issue that I have with
8 respect to Brady, Your Honor, is -- has to do with
9 his tax returns. He indicated specifically that he
10 pays income taxes on the money that he's earned as
11 an informant. I don't believe that. And I believe
12 that the testimony in this case was that he was
13 handed cash and not given a Government check, that
14 he was given cash for his work in this case.

15 And I cannot fathom that, after he was
16 handed 70-something-thousand dollars worth of cash,
17 he then turned around and reported it on his income
18 tax, although that is what he testified to. But I
19 think if he didn't tell the truth about that, and
20 I'm fairly certain he did not, we're entitled to
21 that, and I'd like to see his tax returns and see
22 how much of that 70 -- actually 100,000, if you
23 include moving expenses, he declared.

24 Those are the two main issues with respect
25 to Brady, although as Mr. Young just mentioned, I'd

1 like to see the presentence reports, if nothing
2 else, of Chivo and Gollo to see what they said
3 about this offense and to see if in there they've
4 indicated that they knew any blacks, that they knew
5 blacks were going to be involved, anything about
6 the offense.

7 We don't have any of the -- any of those
8 presentence reports, and I'd request not just for
9 those two, but for all the sentenced individuals in
10 this case. We'd like the presentence reports to
11 see if there is Brady material in there as to what
12 they said was taking place with respect to the
13 black defendants.

14 This is sort of an aside. It's not in the
15 motion. However, Mr. Young has ordered and I
16 thought my office has also, the transcript of the
17 informant, from his testimony at the motion to
18 suppress. We don't have it yet. And we'd request
19 that the court order that whoever's preparing it,
20 whatever court reporter is preparing it, expedite
21 that, because we anticipate that sometime in the
22 week before trial, we're going to be receiving a
23 significant amount of additional discovery from the
24 Government, and it would -- it would be pretty
25 onerous for us to receive that transcript right at

1 the time of trial while we have the other material
2 from the Government.

3 So if the Court would do that, we'd
4 appreciate it the.

5 (A discussion was held off the record
6 between the Court and Court Reporter.)

7 THE COURT: You'll have it in about three
8 days.

9 MR. COOPER: Thank you.

10 MR. LACEY: Your Honor, starting with the
11 New Mexico reports requested by defense counsel, I
12 see that as an issue of inquiry, and deservedly so,
13 that the defense should go into.

14 I was out on leave last week, but I
15 understand in my absence we got at least one report
16 that came in from New Mexico dealing with that
17 incident. When we give out a week before trial the
18 information pertaining to our source, that will be
19 in there as well.

20 Next the tax returns. We don't have tax
21 returns for our informant. We don't have tax
22 returns as far as I'm aware for any of the
23 defendants in this case. We're not going to get
24 them, and it's a cumbersome process. The U.S.
25 Attorney has to authorize it. It's got to go

1 through all sorts of hoops through IRS, and we
2 don't have an obligation, I submit to the Court, to
3 get those, and we don't have them.

4 And talk about time. I don't think there
5 will be enough time anyway, even if we were
6 inclined to go out and get them. But we don't have
7 them, and we don't think there's an obligation on
8 our part to produce tax returns for any of the
9 witnesses in this case, including the informant.

10 As far as the presentence reports for the
11 -- for Gollo and Chivo and the other defendants, I
12 also see that the defense is entitled that. I had
13 a case with Judge Roll some years ago that that was
14 an issue, even where the reports hadn't been
15 generated, and the Ninth Circuit sent it back for
16 additional findings, which Judge Roll made in one
17 of my tunnel cases.

18 So I have put together -- I had put
19 together in my absence last week the PSRs for all
20 the defendants in this case. We'll be redacting
21 all the nonpertinent stuff and bringing them to the
22 Court in camera for you to bless what the redacted
23 versions --

24 THE COURT: When you say "nonpertinent
25 stuff," you're talking about the identification of

1 people, such as social security numbers and stuff
2 like that?

3 MR. LACEY: Yes, Your Honor.

4 THE COURT: Date of birth, too, I think
5 they'd redact.

6 MR. LACEY: Anything -- the personal data
7 that would cause issues with those people, but as
8 far as the factual statements and all the things
9 that they made, obviously the defense is entitled
10 to do that. Especially if they're anything
11 exculpatory, which I don't think there is, but
12 regardless, they'll be getting those as well.

13 THE COURT: Okay.

14 MR. LACEY: If there is anything else the
15 Court has questions about -- thank you.

16 THE COURT: Mr. Young?

17 MR. YOUNG: If I could be heard still on
18 the Brady issue, Your Honor, the presentence report
19 is probably not going to do it for what I'm
20 interested in.

21 What I'm interested in is that part of the
22 debriefing where --

23 THE COURT: If there was a debriefing.

24 MR. YOUNG: If there was.

25 THE COURT: Okay.

1 MR. YOUNG: Where Agent Edwards --

2 THE COURT: Stop for a second.

3 MR. LACEY: To cut it short, I've had
4 those pulled as well, and we'll be having them
5 redacted as far as personal data. All the
6 statements of all the defendants in this case where
7 they gave postarrest statements or statements any
8 time thereafter, those will be part of the
9 materials we'll give to counsel for all defendants
10 in this case.

11 THE COURT: All right.

12 MR. YOUNG: Well, coming down the pike
13 it's a bit of an issue for me, Your Honor, because
14 we're so close to trial. My suspicion is that
15 there was a point during one of these debriefings
16 that I'm presuming happened where Agent Edwards put
17 an eight-by-ten glossy photo of my client, Jerome
18 Ranger, in front of Gollo and in front of Chivo and
19 said, who is this guy, did you hire him, have you
20 ever worked with him before, and they said no.

21 I need that part of the debriefing, and
22 once I get that part of the debriefing, that's
23 certainly something that I would like to present in
24 the course of my case in chief. It's exculpatory
25 because Gollo was the person running this thing,

1 and if he didn't hire my client, and if Chivo
2 didn't hire my client, and if neither of them have
3 ever worked with my client before -- what the
4 Government would like to do is talk about all this
5 stuff that the blacks have done, and I've got one
6 of the three black guys sitting in the courtroom,
7 and everybody's going to be looking at these three
8 blacks like this is all stuff that they've done
9 when I have a very good feeling that Chivo and
10 Gollo have both told the Government we've never
11 seen these guys before.

12 And if that's the case, what are we doing
13 here? And I would like to present that to the
14 jury, and if I am going to present that to the
15 jury, I'm going to need three weeks to get a writ
16 of habeas corpus ad prosequendum together and get a
17 subpoena together and get those served, and
18 hopefully Gollo and Chivo are still in Arizona.

19 We're getting up pretty close to the -- so
20 coming down the pike is not really what I want to
21 hear. I don't want to hear it a week before
22 trial. I just want to know now. I just want to
23 know today, end of the day today, is there
24 exculpatory from Gollo and Chivo with respect to my
25 client.

1 THE COURT: Can you answer that,
2 Mr. Lacey?

3 MR. LACEY: I'd have to check with the
4 agent. Let me check.

5 But first off, as the Court's well aware,
6 the way this investigation came together, they had
7 the Mexican crew. Mayco Ledezma came into the
8 picture. He was the connection with the blacks.
9 That speaks for itself. I can check with the case
10 agent to see if he has any information, if you
11 will.

12 (Off the record.)

13 MR. LACEY: Your Honor, I spoke with Agent
14 Edwards. He tells me that many of the Mexican
15 defendants, including Gollo and Chivo, were shown
16 photographs and identified some of the black
17 members in this -- that are going to trial and also
18 that were involved in the case.

19 I asked them specifically, is there
20 anything negative where they did not identify any
21 of the players involved in this case, and he didn't
22 have any recollection, although we'll definitely
23 check on that.

24 But again, we're -- we have a Brady
25 obligation, and we're well aware of it. We'll know

1 this week, and we'll get to defense counsel
2 anything this week that falls in that category.

3 So they're on notice. Anything where
4 there's negative as far as photo IDs by any of the
5 defendants, we'll let the defense know this week.

6 THE COURT: All right.

7 MR. COOPER: I have one more issue, one
8 more motion I'd like to discuss, if I could.

9 THE COURT: Okay.

10 MR. COOPER: This, Your Honor, would be --
11 it would be under -- I guess would be CR-745. It's
12 No. 2 in our motion and No. 2 in the Government's
13 response but 745 is the Court's number.

14 This has to do with the request to
15 suppress the warrantless nighttime search of Mayco
16 Ledezma's residence on November 11th of 2010, and
17 the Government's -- the reason I'd like to address
18 it is the Government indicates in its response that
19 it does not intend to introduce evidence from the
20 search of the residence in its case in chief at
21 trial.

22 The issue that we had raised previously
23 and what I thought we were trying to raise in this
24 motion was, are they going to try to introduce
25 anything, including the identity of people that

1 took place or that they learned during the course
2 of the search.

3 They don't indicate that --

4 THE COURT: I'm sure that they're going to
5 try to.

6 MR. COOPER: And that's what our motion
7 was intended to preclude.

8 THE COURT: Okay.

9 MR. LACEY: Your Honor, as far as the
10 November search, we don't intend to go into the
11 facts pertaining to that at all in our case. It's
12 only if the defendants, through their putting on
13 their case or cross-examination of our witnesses,
14 opens up those doors, that it would be -- that
15 we'll reconsider that issue.

16 But in our case in chief, we have no
17 intention of going into what happened back in
18 November up in Phoenix.

19 THE COURT: So you're not going to be
20 talking about the dog sniffing and following a car
21 to that particular residence and all that kind of
22 stuff? You're not going to touch it?

23 MR. LACEY: We're not going to go there in
24 our case in chief unless the doors are opened.

25 THE COURT: All right.

1 MR. ARMSTRONG: Thank you, Your Honor.
2 Just a couple of brief matters.

3 Paragraphs eight, nine and 10 of the joint
4 motions in limine, eight is dealing with gang
5 affiliation.

6 THE COURT: Right. I thought we already
7 said there was going to be no testimony at all
8 about gang affiliations in this case.

9 MR. LACEY: That's correct.

10 MR. ARMSTRONG: Okay. And then I read the
11 response. I'm just seeking clarification for nine
12 and 10. I would like to be heard on eight a little
13 bit.

14 Unless the Government's conceding they're
15 not going to be -- my concern is, and this is
16 something that I should have filed a supplemental
17 motion in limine, is the mere color and the make of
18 the vehicle that Ja'Cory was --

19 THE COURT: The color of the vehicle is
20 gang affiliation?

21 MR. ARMSTRONG: Red.

22 MR. LACEY: We're going into that.

23 MR. ARMSTRONG: I missed that. You're not
24 going into that?

25 MR. LACEY: We are going to go into it,

1 but we're not going to suggest it's gang
2 affiliated.

3 MR. ARMSTRONG: Having lived in Tucson for
4 14 years, I think, you know, when I hear folks
5 talking about gang affiliation, whether folks are
6 involved in a gang or not, if they talk about a red
7 Escalade, I think the general perception is that
8 the individuals associated with that vehicle may be
9 involved in a gang.

10 Judge, I don't think that the color of the
11 vehicle or the make of the vehicle, the fact that
12 it's an Escalade, a Cadillac Escalade, has anything
13 to do with whether or not these folks were involved
14 in a conspiracy. I think it's completely
15 irrelevant. I think it would be offered merely to
16 make a suggestion to the jury that the Government's
17 already conceded that does not need to be made and
18 shouldn't be made.

19 THE COURT: The Government also said
20 they're not going to try and make that inference
21 anyway. That's what I thought I heard.

22 MR. ARMSTRONG: Well, and again, it may be
23 something that they're not even trying to elicit.
24 My point is, you heard red Escalade, and folks may
25 jump to the conclusion that --

1 THE COURT: Until you just said that, I
2 have never heard that, ever, that because someone
3 drives a red car, they're in a gang.

4 MR. ARMSTRONG: Well, a red Cadillac
5 Escalade, I think, carries certain -- certainly
6 carries connotations of potentially gang activity.
7 That's been my experience, Your Honor.

8 THE COURT: All right.

9 MR. ARMSTRONG: And again, I don't know
10 why it would matter that it's a Cadillac, that it's
11 an Escalade, or that it's red. The colors -- the
12 color and the make have absolutely nothing to do.
13 It's irrelevant, and I'd ask the Court make a
14 further order that they be precluded from bringing
15 up those issues.

16 MR. LACEY: The Escalade was black, the
17 Expedition was red, just for the record.

18 I've got to set the record straight here.
19 Just so there is no confusion, when I mentioned on
20 the earlier point, when we talked about the
21 November incident up in Phoenix, one way I can see
22 the door being opened is if the defendants on trial
23 here are suggesting that they didn't know Mayco or
24 Mayco Ledezma.

25 He was at that meeting in November, and as

1 were some blacks. If that door gets opened, we're
2 sure going there, and that was an example of how it
3 would become relevant, if they suggested there was
4 no connection between Mayco and these defendants.

5 But other than that, again, we have no
6 intention of going into it in our case in chief,
7 but there are many things that could cause that to
8 change, and that's one example.

9 MR. YOUNG: We're jumping back and forth
10 between a couple of different motions here, Your
11 Honor.

12 With respect to the November 11th, 2010
13 search, that's a Fourth Amendment violation. It's
14 a warrantless search of a house in the middle of
15 the night. It's clearly not coming in under the
16 Fourth Amendment. It was a two-and-a-half-hour
17 wait before they went into the house. There is no
18 exigent circumstances. There is no reason to be
19 going into it.

20 The Government is discussing it in terms
21 of relevance, which is making me just a little bit
22 uneasy, because relevance is really not a Fourth
23 Amendment exception. What would be a Fourth
24 Amendment exception is if one of the defendants
25 took the stand and then said something contrary to

1 what the police discovered or didn't discover or
2 whatever they found out that night.

3 They can be impeached with a Fourth
4 Amendment violation, so really the terminology
5 should be in terms of impeachment rather than
6 relevance. Impeachment is what would make it
7 relevant.

8 And as long as that's the understanding,
9 then I'm comfortable with what's going on with
10 respect to the November 11th search.

11 MR. LACEY: I have nothing further.

12 THE COURT: All right.

13 MR. YOUNG: And the same with respect to
14 the gang affiliation, Your Honor. Again, they're
15 looking at it in terms of relevance. I have to
16 remind --

17 THE COURT: I don't see at any point in
18 time gang affiliations in this case being relevant.

19 MR. YOUNG: I don't think that could
20 happen either. I also don't think that it would be
21 sufficient, and my motion is really couched in
22 terms of sufficiency of the evidence. In terms of
23 Huddleston vs. United States, I don't think there
24 is sufficient evidence to go to the jury.

25 That's why I had Sergeant Denney, if you

1 recall, down here to testify at the hearing. He
2 came in, got on the stand. It was kind of an
3 embarrassment for me. It turned out I had no
4 questions for him at all because the issue of gang
5 involvement was not going to be used.

6 But again, I don't want to see it twisted
7 up into some sort of relevance exception. The
8 problem is there's no evidence of gang --

9 THE COURT: I don't see any way we get
10 involved in a gang discussion in this case.

11 MR. YOUNG: Good. Me neither, Your Honor.

12 MR. COOPER: He's trying to tell you to
13 stop.

14 THE COURT: I'm trying to tell you I've
15 already ruled that gangs aren't to be mentioned --

16 MR. YOUNG: Yes.

17 THE COURT: -- that we're not going to
18 talk about gangs. We're not going to imply that
19 they're gang members. It's not going to happen.

20 MR. YOUNG: On to the next one?

21 THE COURT: Yes.

22 MR. YOUNG: Is there any one that you guys
23 want to do?

24 MR. COOPER: No.

25 MR. YOUNG: Four and five are both

1 responding to the Government as being premature,
2 Your Honor. I'm doing my best here. Last time I
3 was in Court the Government wanted a deadline on
4 motions in limine, so I'm trying to bring this in
5 good faith as quickly as I can, but as the
6 Government points out, they haven't given me the
7 disclosure yet. That's hardly my fault.

8 THE COURT: Four and five being?

9 MR. YOUNG: Very similar motions having to
10 do with pretrial IDs.

11 THE COURT: I just want to make sure we're
12 looking at the same piece of paper. That's all.

13 MR. YOUNG: I'm imagining that the
14 pretrial IDs with Yovani, Gollito, Andy Pineda,
15 with Yovani's brother-in-law probably all happened
16 in the exact same fashion, that they happened with
17 the confidential informant, eight-by-ten glossy
18 photos rather than a six-pack line-up, unless Agent
19 Edwards changed his procedure between the time he
20 talked to the informant and the time that he talked
21 to these cooperating codefendants.

22 And I understand that they have not been
23 disclosed as cooperating codefendants, but Gollito,
24 Yovani, and Andy Pineda stick out. If they had
25 been shown eight-by-ten glossy photos of our

1 clients and identified those photos of our clients
2 as being present at this, that, or the other thing,
3 those are more bad IDs, and we might as well get
4 into it sooner rather than later.

5 If we want to wait until closer to trial,
6 until after the Government's disclosed those facts,
7 that's okay. I bring them now. It's premature,
8 but I still bring them now because I think that's
9 probably what happened.

10 THE COURT: Mr. Lacey?

11 MR. LACEY: Your Honor, we've already
12 addressed some of the issues as far as the
13 defendants in this case who have pled out or
14 resolved their case, and we will be giving the
15 defense all the debriefings, photo identifications
16 that were made by any people in this case, whether
17 they're going to be testifying in court or not.

18 You know, we have a fairly good idea about
19 who we're going to be calling as witnesses in the
20 case, as you can well imagine, but there are some
21 variations to that, and I think it's premature at
22 this point, and perhaps it's a ploy by defense
23 counsel to try and see who our witnesses are going
24 to be earlier on than the week before, but a week
25 before they'll have the information.

1 THE COURT: All right. Anything else,
2 Mr. Young?

3 MR. YOUNG: Yes, Judge. On to No. 6, with
4 respect to other home invasions committed by
5 unnamed blacks who are not here in this courtroom
6 today.

7 As I've indicated, I really think that
8 Gollo and Chivo probably already told the
9 Government that these blacks did not do other home
10 invasions with them. There is a list of stuff that
11 they got to say about blacks generally, that the
12 black males wear police uniforms. That's what the
13 blacks do. Mayco is the boss of a black crew.
14 Home invasions Brandon's crew has conducted in the
15 past. Black males who conduct home invasions --

16 THE COURT: Slow down.

17 MR. YOUNG: I'm sorry. Miami was in
18 charge of a group of blacks who would enter the
19 houses they would rip off. These black guys are
20 crazy. A truck that carries the tools of the black
21 guys. They're good workers. Blacks are more
22 tricky. The blacks got sent up to another job.
23 They send the black guys because they don't give a
24 shit. The black guys go anywhere. They dress as
25 police and wear the vests and everything. They're

1 extreme, but as long as they get paid, they won't
2 hurt the kid. The black dudes just got one
3 yesterday, and it turned out well. There is no
4 problem with them.

5 I don't want to read the whole thing. It
6 goes on for a couple of pages, Your Honor. There
7 is a lot in there about black dudes. There is no
8 names of any black dudes. There's no dates,
9 there's no places, there's no nothing to back up
10 anything that Gollo and Chivo are saying.

11 And as we've discussed earlier, Gollo and
12 Chivo are both notoriously unreliable and happily
13 talking about heads that they've cut off that they
14 didn't really cut off and kidnap victims that
15 they've thrown away that they really didn't kidnap
16 and throw away and making up stuff for the sake of
17 puffing up their own abilities, and they're puffing
18 up their own abilities at the sake of our clients,
19 although they didn't know it at the time. Their
20 our clients now.

21 Now they've apparently got nothing to say
22 about our clients and don't recognize our clients.
23 But they've said all of this stuff about blacks,
24 and here I am representing one of the three blacks
25 in the courtroom, and all this stuff about blacks

1 is going to come rolling in as a co-conspirator
2 statement.

3 I understand hearsay, but I also
4 understand Huddleston, and Huddleston says, if
5 you've got other act information, if you've got
6 prior bad acts, you've got to have sufficient
7 evidence of it to go to the jury, and I submit that
8 anyone of these prior bad acts that they're talking
9 about is insufficient -- would be a directed
10 verdict straight out of the box.

11 If you just tried to convict them on
12 that's what the blacks do, that's a directed
13 verdict straight out of the box.

14 They just got one yesterday and it turned
15 out well. That's not enough evidence to go to a
16 jury. It's not a place. It's not a date. It's
17 not a -- it's not a name. It's --

18 THE COURT: Where did you get all these
19 statements of, the recording?

20 MR. YOUNG: The page number of the
21 disclosure that these page numbers are from?

22 THE COURT: No, I mean these are not the
23 recordings? This is the page number.

24 MR. YOUNG: This is the page number.

25 THE COURT: This is not from the

1 recordings themselves?

2 MR. YOUNG: No. This is from the
3 translation of the recordings.

4 THE COURT: Okay.

5 MR. YOUNG: So that's what I have with
6 respect to Huddleston and 404(b) and other home
7 invasions. I don't want to deal with home
8 invasions that other blacks may or may not have
9 committed. It's got nothing to do with me, it's
10 got nothing to do with my client, and it just
11 dirties up the trial by a lot for me.

12 I don't think it's sufficient to go to the
13 jury under Huddleston.

14 THE COURT: Mr. Armstrong, anything
15 additional you want to add?

16 MR. ARMSTRONG: No, thank you, sir.

17 THE COURT: Mr. Cooper, anything
18 additional you want to add on this?

19 MR. COOPER: No, Your Honor.

20 THE COURT: Mr. Lacey?

21 MR. LACEY: Yes. Thank you, Your Honor.

22 Your Honor, there's some delicate areas
23 that have to be addressed or will be addressed
24 during the course of the trial.

25 For example, one or more of the witnesses,

1 Government witnesses, that will be testifying were
2 involved in other home invasions. They may have
3 been involved, depending upon which witness it may
4 be, with some of these defendants.

5 If on cross-examination by -- I need to
6 know or would request to know whether the defense
7 is going to cross-examine some of these witnesses,
8 the Government witnesses, about prior home
9 invasions they may have committed, and if they are,
10 then I want to go into it on direct examination
11 first, for the obvious reasons.

12 If they're going to say we're not going to
13 ask them any questions about any prior home
14 invasions, then that makes it a little different,
15 and we can try and sterilize the case as much as we
16 can up to a point.

17 But part of the conversations that were
18 had by the Mexicans with the informant, some of the
19 recorded meetings are where Mr. Tucker may have
20 been present on 2/4, for example, conversations
21 where the Mexican co-conspirators were talking,
22 trying to build up the confidence of the informant
23 about the credentials of the people they were
24 working in conjunction with, that is, the black
25 crew that they worked with in the past and we're

1 going to work with on this job.

2 In that -- in that respect, it's relevant
3 because it's during and in furtherance of the
4 conspiracy, trying to build up the credentials of
5 the co-conspirators who were not present.

6 So it's a delicate balance, but it will be
7 something that we need address further beyond just
8 throwing out some statements that were --

9 THE COURT: How many of these recordings
10 do you intend to play?

11 MR. LACEY: We intend to play certain
12 portions of the 2/4 meeting, portions, redacted,
13 because it's a fairly long meeting, and I'm not
14 going to bore the jury out of their socks.

15 And we'll have those ready a week before
16 trial with the redacted versions of what we intend
17 to play in front of the jury, similarly with the
18 other calls or the other meetings that may have
19 taken place. For example, on 3/2, the informant
20 was in a vehicle driving with one of the Mexican
21 crew members down to the warehouse. That was
22 recorded.

23 It was a recording done at the warehouse
24 where there's a conversation about -- the blacks
25 came up during the course of that conversation,

1 during the course of that day, on 3/2. That would
2 be highly relevant about what was going to take
3 place with the people that were present in Tucson
4 on that day.

5 So it depends. We'll have all that laid
6 out for the defense a week before trial when we
7 video our redacted versions.

8 THE COURT: When you lay that out for
9 them, lay it out for me too. I want to see them.

10 MR. LACEY: Absolutely. Yes, Your Honor.
11 I'd be happy to.

12 MR. YOUNG: Well, Your Honor, there he
13 goes again with the relevance. I'm not attacking
14 the relevance. I'm attacking the sufficiency.
15 There is no evidence of these other home invasions.

16 THE COURT: I understand what you're
17 saying, Mr. Young. Here's the bottom line. There
18 is going to be some testimony, and the question is
19 how much testimony, about the fact that Gollo or
20 whoever it was said there is a black crew. We're
21 going to use a black crew. They're going to have
22 vests. They're going to have guns. We'll use them
23 to kick down the door or something like that.
24 That's probably coming in.

25 The fact that they've done this before,

1 done it many other times, that's a whole different
2 ball game. I'm not sure we need to go there.

3 Okay?

4 MR. YOUNG: Okay.

5 THE COURT: I'm with you to that point,
6 and I think Mr. Lacey is going to be with you until
7 that point.

8 This stuff like these black guys are
9 crazy, that kind of stuff, I don't think we need
10 those kind of statements either, so -- but there is
11 going to be some testimony that there is talk about
12 a black crew coming down with them, that they're
13 going to have vests, they're going to have guns.

14 That limited testimony for sure is going
15 to be coming in. The fact that these other, let me
16 say, extrajudicial statements are made aren't
17 necessarily coming in. We're not going to be --
18 we're not going to be trying to prove whether they
19 committed another home invasion or not. That's
20 really not the issue. The issue is, were they
21 involved in this one.

22 MR. YOUNG: And while we're redacting the
23 February 4 statement, I was just talking to
24 Mr. Cooper about that, and so I speak for him a
25 little bit too, I can see where the Government

1 would like to redact some of that language out of
2 the February 4 statement, and I'm -- I'm not sure
3 that the defense team is going to go along with
4 that, because it displayed some real derogatory
5 language and disrespect and disregard for blacks
6 generally.

7 THE COURT: All right. You look at what
8 they put and you tell them what else you want out
9 of that February 4th meeting. I remember that
10 there was quite some derogatory stuff that was
11 said, and a lot of it was said by the confidential
12 informant, if my memory is correct.

13 MR. LACEY: Most of it was said by the
14 Mexican defendants. There was some, relatively
15 speaking, a very small part by the informant.

16 THE COURT: All right.

17 MR. YOUNG: On to the next one, Your
18 Honor?

19 THE COURT: On to the next one.

20 MR. YOUNG: Seven and 12, I've got some
21 comments to both of these that are somewhat --

22 THE COURT: Postarrest statements?

23 MR. YOUNG: Seven is a Bruton motion with
24 respect to the postarrest statements, yes, sir.

25 THE COURT: Who made a post arrest

1 statement that the Government is trying to get in
2 in their case in chief?

3 MR. YOUNG: Well, everybody made
4 postarrest statements when they were stopped. I'm
5 maybe misinterpreting what the Government says in
6 its response to No. 7.

7 It talks -- it distinguishes nontestifying
8 codefendants and defendants going to trial. Now,
9 the defendants that go to trial may well also be
10 nontestifying codefendants, and if that's the case,
11 under Bruton, I don't want to be hearing from any
12 of these other nontestifying codefendants as well.

13 The reason this is concerning me is,
14 because I look down to the response at No. 12 with
15 respect to the Colt python. The Colt Python was
16 used to murder somebody's father in Vacaville years
17 ago. That person is now doing jail time. He
18 apparently sold it at a pawnshop before, and it
19 never got found. It turned up.

20 That's obviously not relevant to anything,
21 but the Government's response at 12 is that it may
22 use Ja'Cory Ranger's postarrest statement regarding
23 knowledge and possession of that particular Colt
24 Python, and since, since Ja'Cory Ranger is my
25 client Jerome Ranger's brother, I certainly don't

1 want Ja'Cory Ranger's statements coming in in my
2 client's trial, because anything my client's
3 brother said is quite naturally going to be
4 imputed, is going to rub off on my client.

5 Ja'Cory Ranger claimed several of the guns
6 that were in his vehicle. Now, that may have been
7 ill-advised on his part, but anything that he said
8 that hurts himself as one of the two drivers in
9 this case is going to rub off on the other driver,
10 which is his brother.

11 So I want to make sure that the
12 codefendant's statements are not coming in in my
13 case. Both the codefendants who've already pled
14 and the codefendants who are going to trial with
15 me, I don't think there is a distinction between
16 them. They're all codefendant statements to me.

17 THE COURT: Mr. Lacey?

18 MR. LACEY: Your Honor, counsel's
19 correct. All three defendants made some sort of
20 statement postarrest. One example he refers to is
21 Ja'Cory Ranger admitting to borrowing one of the
22 weapons that was seized that day from a third
23 party. We think that that is admissible, should be
24 admissible. It's an admission against that
25 defendant.

1 Mr. Young's client made several admissions
2 as well implicating himself or saying that they
3 partook in search activities that morning, going to
4 a 7/11 and some other things that we may have heard
5 -- or Circle K. They were going to go hunting.
6 That was to justify the weapons being present.
7 That was one of the things that was thrown out
8 there.

9 So we think it is relevant, and that is an
10 issue that will need to be addressed.

11 THE COURT: Let me see those statements,
12 too, before we get there.

13 MR. LACEY: Of course.

14 MR. COOPER: Can I ask a question, Your
15 Honor?

16 THE COURT: Sure.

17 MR. COOPER: Given what Mr. Lacey has just
18 indicated and your request to see the statements,
19 did you want -- I haven't done it yet, but it's
20 been in the back of my mind throughout. The
21 potential Bruton issue, did you want a brief or any
22 authority on the Bruton possibilities?

23 THE COURT: I think I know Bruton fairly
24 well, but until I see what the statements are, I
25 don't need you to -- I don't need you to chop down

1 any more trees.

2 MR. COOPER: I can see that coming down
3 the pike, actually.

4 MR. YOUNG: The other motions I had were
5 all pretty quick, and I think the Government's
6 addressed them, Your Honor.

7 With respect to bullet holes in Ja'Cory's
8 car that were put there by one of his friends, the
9 gunshot wound to Ja'Cory's --

10 THE COURT: Slow down.

11 MR. YOUNG: The bullet holes in Ja'Cory's
12 car that were put there by a friend. The gunshot
13 wound to Cory's --

14 THE COURT: Is it gunshot -- is the bullet
15 hole in the car relevant in the case in chief?

16 MR. LACEY: Not relevant. Not going to be
17 brought in by us.

18 THE COURT: All right. The fact he shot
19 himself in the leg, is that relevant?

20 MR. LACEY: No, and he may not have been
21 shot by himself, but whatever the case, we're not
22 going into it.

23 THE COURT: All right.

24 MR. YOUNG: Ghermon Tucker's January 6
25 joyride in my client's vehicle.

1 THE COURT: No.

2 MR. YOUNG: And obviously Ardawwn's prior
3 defaced weapon arrest, none of that's coming in?

4 THE COURT: Ardawwn Bryant's prior defaced
5 weapons arrest? Depends on whether he testifies or
6 not.

7 MR. YOUNG: I don't think he will be, Your
8 Honor.

9 THE COURT: All right. Otherwise his
10 arrest wouldn't be necessarily relevant, would it?

11 MR. YOUNG: No, Your Honor.

12 THE COURT: Do you agree Mr. Lacey?

13 MR. LACEY: I do, Your Honor.

14 MR. YOUNG: That's all I have, Your Honor.

15 MR. LACEY: I would point out that the --
16 Mr. Tucker being arrested in Mr. Ranger's vehicle
17 or being pursued by the police, we don't see the
18 relevance of that pursuit, but we do have someone
19 from law enforcement to say that, on a particular
20 day, that Mr. Tucker was in Mr. Ranger's vehicle.

21 That may be relevant to show the
22 associations between these people, again, in a more
23 -- in a sterile environment, asking Officer Jon,
24 can you tell us what happened on this date? Yes.
25 On this date, at this location, I stopped this

1 vehicle registered to Mr. Ranger. Who was in the
2 vehicle? Mr. Tucker. And just stop it cold.

3 Again, for associations, not to go
4 anything further as far as any legal pursuit or
5 anything else, unlawful flight that may have taken
6 place.

7 THE COURT: All right.

8 MR. LACEY: Your Honor, one thing I'd also
9 request of the Court, a week before trial we're
10 going to be making our witness list available,
11 exhibit list, and the other things we've talked
12 about.

13 I would also request to the Court to have
14 the defense do the same a week before trial, to
15 give us the witness list, with the exception, of
16 course, of their clients, who may or may not
17 testify.

18 MR. COOPER: Well, I'm in the process of
19 preparing that lengthy list, Your Honor.

20 THE COURT: A lengthy list?

21 MR. COOPER: As we speak.

22 MR. LACEY: If we could have it a week
23 before trial at the same time as ours, that would
24 be appreciated.

25 THE COURT: Mr. Armstrong?

1 MR. ARMSTRONG: No objection to that.

2 THE COURT: Mr. Young?

3 MR. YOUNG: I'm in the process, Your
4 Honor. I'm going to have to return to Phoenix, if
5 I can get up there this week. There are a number
6 of people that I need to talk to. The case has
7 changed a lot since I was up there last summer. I
8 need to talk to the witnesses again and see who's
9 -- who it is that I want to use.

10 THE COURT: Do you think you can get it to
11 them a week before trial?

12 MR. YOUNG: I think so.

13 THE COURT: Okay. Anything else?

14 MR. LACEY: No, Your Honor. Thank you.

15 MR. COOPER: No, Your Honor.

16 MR. ARMSTRONG: No. Thank you.

17 THE COURT: I have one question. How long
18 do we think the trial's going to take?

19 MR. COOPER: I think if it was just one
20 lawyer and the prosecutors maybe two weeks, but I
21 really think with three attorneys it will be three
22 weeks, on top of which, as I want to remind you
23 again, the first week is going to be a little bit
24 abbreviated.

25 THE COURT: I remember you have someplace

1 you have to be. Have you already rented the
2 tuxedo?

3 MR. COOPER: I am not in the wedding. I
4 am an observer.

5 THE COURT: You have to wear a suit or
6 something.

7 MR. COOPER: I'll wear a tie.

8 THE COURT: You'll wear a what?

9 MR. COOPER: A tie.

10 THE COURT: And a coat?

11 MR. COOPER: Well, maybe.

12 THE COURT: All right. I'll get a ruling
13 out on these motions so you know exactly where you
14 are.

15 Thank you.

16 MR. ARMSTRONG: Thank you, Your Honor.

17 MR. LACEY: Thanks, Your Honor.

18 (Proceedings concluded in this matter.)
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C E R T I F I C A T E

I, Erica R. Grund, do hereby certify that I took the machine shorthand notes in the foregoing matter; that the same was transcribed via computer-aided transcription; that the preceding pages of typewritten matter are a true, correct, and complete transcription of those proceedings ordered, to the best of my skill and ability.

Dated this 2nd day of January, 2013.

s/Erica R. Grund
Erica R. Grund, RDR, CRR
Official Court Reporter